

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's	)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	
To: The Commission		

**COMMENTS OF  
BELLSOUTH CORPORATION, BELLSOUTH WIRELESS CABLE, INC. AND  
SOUTH FLORIDA TELEVISION, INC.**

BellSouth Corporation and its wholly-owned subsidiaries BellSouth Wireless Cable, Inc. and South Florida Television, Inc. (collectively, "BellSouth") hereby submit Comments on certain of the proposals and suggestions contained in the Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.<sup>1</sup> In these Comments, BellSouth addresses those issues that are most critical to balancing the interests of incumbent BRS-1/2 licensees with those of new entrants in the Advanced Wireless Service ("AWS") in the 2150-2160 MHz band. Specifically, BellSouth believes the Commission should:

- Adopt its proposal to require AWS new entrants to provide incumbent BRS-1/2 licensees with "comparable facilities."
- Allow BRS incumbents to "self-relocate" and require AWS new entrants to fund relocation of BRS-1/2 to Commission-designated spectrum in the 2.5 GHz band.

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<sup>1</sup> In the Matter of Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, ET Docket No. 00-258, FCC 05-172 (released September 29, 2005) ("FNPRM"). A summary of the document was published in the Federal Register on October 26, 2005. See 70 Fed. Reg. 61752 (2005).

- Permit either the AWS new entrant or the BRS incumbent to trigger mandatory reimbursement negotiations.
- Reject its proposal to impose a sunset date on relocation and reimbursement negotiations and, in the absence of any agreement, require reimbursement to be paid to “self-relocating” BRS-1/2 licensees by the end of the three-year mandatory negotiation period and, for all other BRS-1/2 licensees, no later than ten years following grant of the AWS license.

### **Background**

BellSouth is an existing BRS/EBS operator with significant spectrum holdings in urban and rural markets throughout the southeast United States. BellSouth operates downstream video facilities on BRS-1 at Atlanta, Georgia; Fort Myers, Florida; Miami, Florida; and Louisville, Kentucky, and is licensed to provide point-to-point video services on BRS-1 at Lake City, Florida.<sup>2</sup> In addition, BellSouth holds Basic Trading Area (“BTA”) rights in six BTAs where it has the exclusive right to construct and operate new BRS-1/2 stations.<sup>3</sup>

Since entering the BRS business in 1996, BellSouth has expended millions of dollars in engineering, equipment and operational costs to convert analog video systems to digital video systems, and has expended additional resources to conduct wireless broadband access trials on BRS spectrum in the Atlanta, Georgia market. BellSouth has also conducted wireless broadband trials in Daytona Beach and Palatka, Florida.

In August 2005, BellSouth launched a commercial wireless broadband system in Athens, Georgia using BRS spectrum. More recently, in the aftermath of Hurricane

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<sup>2</sup> Call Signs WQR43 (Atlanta, Georgia); KNSC799 (Fort Myers, Florida); KNSD905 (Lake City, Florida); WLJ79 (Miami, Florida) and KOA86 (Louisville, Kentucky). As a consequence of new rules providing for geographic-area licensing rather than site-specific licensing, the Commission eliminated site-specific licenses that were granted pursuant to BTA authorizations. Thus, Call Signs KNSC799 and KNSD905 no longer appear in the Universal Licensing System.

<sup>3</sup> BTA B024 (Atlanta, Georgia); B107 (Daytona Beach, Florida); B151 (Fort Myers, Florida); B212 (Jacksonville, Florida); B239 (Lakeland, Florida); and B336 (Orlando, Florida).

Katrina, BellSouth restored broadband service in New Orleans and other markets along the Gulf Coast using licensed wireless technology. In sum, BellSouth has tested and has deployed commercial wireless broadband services in a number of markets across the southeast.

BellSouth actively supported the rule changes in the order that effected the “rebanding” of the BRS/EBS spectrum<sup>4</sup> and in this docket has opposed the efforts of Globalstar LLC<sup>5</sup> and others<sup>6</sup> to substantially restrict the ability of BRS-1 licensees to provide service. As a licensee that operates facilities, provides service, holds undeveloped BTA spectrum rights and is a potential bidder for AWS spectrum, BellSouth has a strong interest in ensuring that the Commission adopts rules that do not prejudice the rights of incumbent BRS licensees or the future rights of AWS new entrants.

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<sup>4</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*BRS/EBS Order*”). Prior to release of the *BRS/EBS Order*, BellSouth filed Comments on September 8, 2003 and Reply Comments on October 23, 2003. Following release of the *BRS/EBS Order*, BellSouth filed Comments on January 10, 2005, a Consolidated Opposition to Petitions for Reconsideration on February 22, 2005 (“BellSouth Opposition”) and a Consolidated Reply to Oppositions to Petitions for Reconsideration on March 9, 2005.

<sup>5</sup> See Opposition of BellSouth to Petition for Reconsideration of Globalstar LLC, IB Docket No. 02-364, filed October 27, 2004; Reply of BellSouth to Consolidated Opposition of Globalstar LLC, IB Docket No. 02-364, filed November 8, 2004.

<sup>6</sup> See, e.g., Letter to Marlene H. Dortch, Secretary, from Paul J. Sinderbrand, Notice of Oral Ex Parte Presentation, IB Docket No. 02-364, filed October 19, 2005.

## Discussion

### **I. THE COMMISSION SHOULD ADOPT RELOCATION AND NEGOTIATION RULES THAT BETTER BALANCE THE INTERESTS OF BRS INCUMBENTS AND AWS NEW ENTRANTS.**

The Commission should adopt its proposal to require AWS new entrants in the 2150-2160 MHz band to provide “comparable facilities” to BRS licensees that are required to relocate. Consistent with its rules in other services and as proposed in the *FNPRM*,<sup>7</sup> “comparable facilities” should be defined as:

replacement facilities that allow [incumbent licensees] to maintain the same level of service in terms of: (1) throughput – the amount of information transferred within the system in a given amount of time; (2) reliability – the degree to which information is transferred accurately and dependably within the system; and (3) operating costs – the cost to operate and maintain the system.<sup>8</sup>

Adopting this definition would be consistent with policies designed to “facilitate negotiations and reduce disputes” between incumbent licensees and new entrants.<sup>9</sup>

In several respects, however, the Commission’s proposals for governing relocation of BRS-1/2 facilities and reimbursement for relocation costs fail to strike the appropriate balance between the interests of BRS incumbents and those of AWS new entrants. The Commission recognized the public interest benefits that BRS-1/2 licensees could offer when it adopted comprehensive rule changes for BRS to facilitate greater flexibility, more efficient spectrum use and development of advanced services in the 2.5 GHz band, stating that:

spectrum within the 2500 MHz band is the optimal location to relocate existing [BRS-1/2] licensees because it will allow the creation of an

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<sup>7</sup> See *FNPRM* at ¶16. See also Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 95-157, 11 FCC Rcd 8825, 8840-43 (1996) (“*Microwave Relocation Order*”).

<sup>8</sup> See *FNPRM* at ¶16.

<sup>9</sup> *Microwave Relocation Order*, 11 FCC Rcd at 8840.

optimal band plan with contiguous spectrum, and integrate these licenses into the new BRS instead of orphaning [BRS-1/2] operations such that they would be part of a different service.<sup>10</sup>

In addition to furthering these objectives, the Commission should recognize in its rules that AWS licensees are likely competitors to BRS. In light of these concerns, BellSouth urges the Commission to adopt the following rules that will better balance the interests of BRS incumbents and AWS new entrants.

**A. The Commission Should Allow a BRS Incumbent to “Self-Relocate” Its Facilities Prior to Concluding Negotiations with the AWS New Entrant.**

In some cases, a BRS-1/2 licensee may choose to relocate its facilities prior to the AWS Block F auction or prior to concluding mandatory negotiations. Consistent with precedent, the Commission should permit a BRS incumbent to relocate its own facilities, with reimbursement negotiations to take place during a mandatory negotiation period following grant of the AWS Block F license for the relevant market.

In the microwave relocation proceeding, the Commission permitted microwave incumbents to relocate themselves in order to “accelerate the relocation process by promoting system-wide relocations [and] give microwave incumbents the option of avoiding time-consuming negotiations, allowing for faster clearing” of the band.<sup>11</sup> A BRS-1/2 licensee that “self-relocates” would do so with the understanding that the costs of “comparable facilities” would be reimbursed pursuant to subsequent negotiations.

In light of this precedent, there is no reason for the Commission to adopt a more stringent set of rules for BRS incumbents. The Commission itself noted that the 2.5 GHz band is the “optimal location” for BRS-1/2 because of its integration with other BRS

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<sup>10</sup> *BRS/EBS Order* at ¶27.

<sup>11</sup> Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Second Report and Order*, WT Docket No. 95-157, 12 FCC Rcd 2705, 2717 (1997).

licenses. Because transitions to the new BRS/EBS band plan will occur on a system-wide basis, it would be logical to include BRS-1/2 licenses – in essence, facilitating system-wide band clearing and system-wide transition in the same process. Moreover, relocation would be expedited because BRS licensees that clear the band may do so without having to wait, perhaps several years, for relocation negotiations to conclude.

**B. The Commission Should Reject its Proposal to Allow Only the AWS New Entrant to Initiate Negotiations.**

BellSouth does not oppose the Commission’s plan for a three-year mandatory negotiation period running from the date on which negotiations are triggered.<sup>12</sup> However, BellSouth believes that the Commission should reject its proposal to allow only AWS new entrants to trigger relocation and reimbursement negotiations because it lacks balance and prejudices the rights of incumbent BRS licensees.<sup>13</sup> BellSouth strongly believes that either party – the BRS incumbent or the AWS new entrant – should be permitted to trigger negotiations. Further, the Commission should state clearly that the AWS new entrant should bear responsibility only for reimbursement of legitimate relocation expenses consistent with the “comparable facilities” definition.

Without this right, BRS incumbents may never obtain reimbursement given the AWS licensing and service rules. AWS licenses in the 2145-2155 MHz Block F will be allocated according to large Regional Economic Area Groupings and, in order to meet “substantial service” obligations at the end of the license term,<sup>14</sup> may not need to construct in areas where interference with BRS-1/2 incumbents would result.

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<sup>12</sup> See *FNPRM* at ¶24.

<sup>13</sup> See *id.*

<sup>14</sup> See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (“*AWS Report and Order*”) at ¶¶75-77. The Commission specifically rejected imposing any interim construction or service milestones.

Consequently, an AWS licensee may have no incentive to negotiate reimbursement with the BRS incumbent that has cleared the 2150-2160 MHz band as intended by the Commission for the benefit of AWS new entrants. This result unfairly rewards the AWS licensee at the expense of the BRS incumbent that wants to serve the public with new services and facilities.

**C. The Commission Should Require AWS New Entrants to Fund Relocation of BRS-1/2 Incumbent Licensees to Commission-Designated Spectrum in the 2.5 GHz Band or Alternative Spectrum in the 2.5 GHz Band Where Relocation Occurs Prior to a Transition to the New Band Plan or Where the BRS/EBS System Licensee is Exempt from Transitioning.**

The Commission should require AWS new entrants to fund relocation of BRS-1/2 incumbents to designated spectrum in the post-transition BRS/EBS band specified in Section 27.5(i)(2) (*i.e.*, 2496-2502 MHz for BRS-1 and 2618-2624 MHz for BRS-2). First, many, if not most, of the BRS-1/2 stations operate in a system with multiple BRS and EBS licensees, with multiple channels delivered over a unified wireless system. If the services on relocated BRS-1/2 facilities were not capable of being transmitted on the same 2.5 GHz system as other BRS and EBS channels in the market, those replacement facilities would not be comparable. Second, because the Commission has set aside new spectrum in the 2.5 GHz band specifically for BRS-1 and BRS-2 licensees as part of the post-transition band plan, relocating facilities and customers to the 2.5 GHz band would be consistent with Commission policies. Third, licensees will be adding new advanced services, including portable and mobile services, and including BRS-1/2 spectrum would create more in-band capacity. By relocating to the 2.5 GHz band, equipment costs will be lower than if two platforms were employed, making BRS/EBS services less expensive for customers.

There are two cases where an alternative solution would apply. First, if a BRS-1/2 licensee constructs and operates facilities *prior to* a transition of the market to the post-transition band plan, the current band plan cannot accommodate the channels without creating overlap with other BRS and EBS licensees. Second, if a licensee obtains relief from rules requiring transition and is permitted to operate under the pre-transition band plan, relocating BRS-1 and BRS-2 licensees to the designated 2.5 GHz spectrum would result in a similar overlap.<sup>15</sup> Specifically, in either case, relocation of BRS-1 to 2496-2502 MHz would overlap a portion of current Channel A1, and relocation of BRS-2 to 2618-2624 MHz would overlap portions of current Channels F2 and E3. To address these circumstances, BellSouth reiterates its support<sup>16</sup> of WCA's proposal to relocate BRS-1 to 2496-2500 MHz and BRS-2 to 2686-2690 MHz.<sup>17</sup> Although these alternative spectrum assignments would reduce the bandwidth of each channel from 6 MHz to 4 MHz, BellSouth believes that this outcome is acceptable because an out-of-band solution would involve more expense and more complexity, and would undermine many of the intended benefits of relocating BRS-1 and BRS-2 to the 2.5 GHz band. If and when a BRS-1/2 licensee subsequently transitions, it could at that time relocate to 2496-2502 MHz and 2618-2624 MHz, respectively, as prescribed by Section 27.5(i)(2).

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<sup>15</sup> See *BRS/EBS Order* at ¶¶75-77 (stating that licensees that meet certain criteria can seek waiver of the requirement to transition to the new band plan). BellSouth, WCA and others have asked the Commission to permit qualifying licensees to automatically opt out of a transition. See BellSouth Opposition at 17-19; Petition for Partial Reconsideration of the Wireless Communications Association International, Inc., WT Docket No. 03-66, filed January 10, 200 ("WCA Petition") at 26-30.

<sup>16</sup> See BellSouth Opposition at 19.

<sup>17</sup> See WCA Petition at 31-33.



**II. THE COMMISSION SHOULD REQUIRE “SELF-RELOCATING” BRS-1/2 LICENSEES TO BE REIMBURSED BY THE END OF THE THREE-YEAR MANDATORY NEGOTIATION PERIOD AND WITHIN TEN YEARS FOR ALL OTHER BRS-1/2 LICENSEES, IN THE ABSENCE OF ANY AGREEMENT.**

The Commission should not adopt its proposal to establish a ten-year sunset date for concluding relocation negotiations.<sup>18</sup> Because AWS licensees could have more than 15 years to demonstrate “substantial service”<sup>19</sup> and might not serve areas covered by BRS-1 operations, there may be no incentive for AWS new entrants to engage in relocation or reimbursement negotiations. Conceivably, the sunset date could pass before the AWS licensee has any obligation to provide service, and the BRS incumbent would not be able to obtain reimbursement for relocating. As is the case with the Commission’s proposal to allow only AWS new entrants to trigger negotiations, the proposal to sunset negotiations favors the AWS new entrant that is not using spectrum at the expense of a long-time incumbent that has relocated in order to serve the public.

In lieu of a sunset date, the Commission should require AWS Block F licensees to fund all BRS-1/2 relocations. For licensees that “self-relocate,” reimbursement should be made by the end of the three-year mandatory negotiation period. This requirement would encourage BRS licensees to further the Commission’s interest in expediting band-clearing by ensuring reimbursement within a shorter time period, and would fairly recognize BRS licensees that take the initiative and assume the risk of “self-relocating.” For licensees that relocate pursuant to negotiations during the mandatory period, all reimbursements should be paid within ten years following grant of the AWS Block F

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<sup>18</sup> See *FNPRM* at ¶26.

<sup>19</sup> See *AWS Report and Order* at ¶¶70-71; 47 C.F.R. §27.13(g). The 15-year term applies to initial AWS licenses issued before December 31, 2009.

licenses. The Commission, however, should provide BRS licensees and AWS new entrants the flexibility to agree to other reimbursement schedules.

Because the Commission is requiring all BRS-1/2 licensees to relocate, all BRS-1/2 incumbents should be entitled to reimbursement in an expeditious manner, regardless of whether operation of the AWS Block F system would result in interference. This will ensure that, in exchange for vacating the 2150-2160 MHz band, all BRS incumbents are compensated within a reasonable time period relative to the timing of relocation.

### **Conclusion**

In light of the foregoing, BellSouth respectfully requests that the Commission adopt the rule changes proposed and discussed above.

Respectfully submitted,

**BELLSOUTH CORPORATION,  
BELLSOUTH WIRELESS CABLE, INC. AND  
SOUTH FLORIDA TELEVISION, INC.**

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